

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TAMI VOLK, et al.,  
  
Plaintiffs,  
  
v.  
  
PIERCE COUNTY et al.,  
  
Defendants.

No. C04-5315RBL  
  
ORDER DENYING  
PLAINTIFFS' MOTION  
TO COMPEL

This matter is before the court on the Plaintiff's Motion to Compel [Dkt. #41]. Plaintiff seeks emails exchanged between Deputy Messineo and two Deputy Prosecuting attorneys for Pierce County. The emails apparently referenced "State vs. Volk" and related to the incident which led to the instant litigation. Defendants now seek to protect the emails from disclosure under the work product privilege, though neither the author nor the recipient of the emails was a party to the precise litigation anticipated at the time the email was created.

Defendants cite a Washington case, *Dever v Fowler*, 63 Wn. App. 35, 816 P.2d 1237, 824 P.2d 1237 (1991) for the proposition that the documents prepared in anticipation of litigation are protected whether or not the party(ies) from whom they are sought is a party to the present (or the prior) litigation. The court agrees with and is persuaded by this analysis. *See also Pappas v. Holloway*, 114 Wn.2d 198, 78 P.2d 30 (1990) (privilege does not expire with cessation of litigation for which documents were prepared).

The fact that the litigation immediately anticipated at the time of the emails was between the State and Ms. Volk does not mean that the document is discoverable in subsequent litigation between Ms. Volk and the officer who wrote (or received) the communications.

1  
2 The privilege attaches and the Plaintiff's Motion to Compel [Dkt. #41] is therefore DENIED.  
3

4 Dated this 27<sup>th</sup> day of July, 2005

5  
6   
7 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28